

2007 DRAFTING REQUEST

Bill

Received: **12/05/2007**

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - LRC**

By/Representing: **Don Dyke**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - securities**

Extra Copies: **MDK**

Submit via email: **YES**

Requester's email: **Don.Dyke@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

the time period for providing offering circulars under the franchise investment law

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	agary 12/05/2007	jdye 12/06/2007	pgreensl 12/06/2007	_____	lparisi 12/06/2007		
/1	agary 12/18/2007	jdye 12/19/2007	pgreensl 12/19/2007	_____	sbasford 12/19/2007	mbarman 12/19/2007	

FE Sent For:

<END>

→ Not Needed

2007 DRAFTING REQUEST**Bill**Received: **12/05/2007**Received By: **agary**Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - LRC**By/Representing: **Don Dyke**This file may be shown to any legislator: **NO**Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - securities**Extra Copies: **MDK**Submit via email: **YES**Requester's email: **Don.Dyke@legis.wisconsin.gov**Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

the time period for providing offering circulars under the franchise investment law

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	agary 12/05/2007	jdye 12/06/2007	pgreensl 12/06/2007	_____	lparisi 12/06/2007		
/1	agary 12/18/2007	jdye 12/19/2007	pgreensl 12/19/2007	_____	sbasford 12/19/2007		

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: 12/05/2007

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Legislative Council - LRC

By/Representing: Don Dyke

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Fin. Inst. - securities

Extra Copies: MDK

Submit via email: YES

Requester's email: Don.Dyke@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

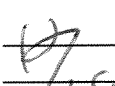
Topic:

the time period for providing offering circulars under the franchise investment law

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	agary 12/05/2007	jdye 12/06/2007	pgreensl 12/06/2007		lparisi 12/06/2007		

FE Sent For:


<END>

2007 DRAFTING REQUEST

Bill

Received: 12/05/2007

Received By: agary

Wanted: As time permits

Identical to LRB:

For: Legislative Council - LRC

By/Representing: Don Dyke

This file may be shown to any legislator: NO

Drafter: agary

May Contact:

Addl. Drafters:

Subject: Fin. Inst. - securities

Extra Copies: MDK

Submit via email: YES

Requester's email: Don.Dyke@legis.wisconsin.gov

Carbon copy (CC:) to: aaron.gary@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

the time period for providing offering circulars under the franchise investment law

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	agary	12/6 jld	12/6 ps	12/6 ps	12/6 ps		

FE Sent For:

<END>



State of Wisconsin
Department of Financial Institutions

Extra Copy

P - draft

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

December 5, 2007

Mr. Donald Dyke, Chief of Legal Services
Joint Legislative Council
One East Main St., Suite 401
Madison, Wisconsin 53701

Re: Wisconsin Department of Financial Institutions, Division of Securities/
Wisconsin Franchise Law Minor Substantive Remedial Legislation
Proposal for Law Revision Committee Consideration

Dear Mr. Dyke:

Following up on a recent telephone discussion with you by DFI Securities Division Legal Counsel Randall Schumann regarding the above-reference subject matter, attached for Law Revision Committee consideration at its next scheduled meeting on December 12, 2007, is draft language of a needed Minor Substantive Remedial legislative change in line-and-strike form to an existing section of the Wisconsin Franchise Law for the purpose of amending it to be consistent with a recent federal law change.

The draft statute change would amend the existing provision in sec. 553.27(4) of the Wisconsin Franchise Law (which requires a franchisor to provide a franchise disclosure document to a prospective Wisconsin franchisee at least 10 business days before a binding franchise agreement is signed or any payment is made, whichever first occurs) to be consistent with a recent change to the Federal Trade Commission Rule requirement on that subject which changed the previous federal timing requirement from a 10-business-day time period to a 14-calendar-day time period. Separately attached is a copy of the Federal Trade Commission rule section 436.2(a) (see highlighted item), adopted effective July 1, 2007, which sets forth the language of the new FTC 14-calendar-day requirement. Under the new FTC Rule, franchisors who offer and sell their franchises nationally in multiple states, including Wisconsin, have the option of continuing to use/comply with the "old" 10-business-day time period until July 1, 2008, after which date they must comply with the "new" 14-calendar-day requirement.

The need for the remedial statute language change is to eliminate the inconsistency that would occur after July 1, 2008 between the existing Wisconsin 10-business-day provision (which conforms to the "old" FTC Rule time period) and the "new" FTC 14-calendar-day provision. Such an inconsistency would adversely impact franchisors who, without the proposed remedial amendment in place, would be faced with conflicting federal and Wisconsin state timing requirements for providing franchise disclosure documents to potential franchisees in Wisconsin.

There would be no fiscal effect resulting from the proposed remedial amendment change to sec. 553.27(4) of the Wisconsin Franchise Law.

Division of Securities

Mail: PO Box 1768 Madison, WI 53701-1768

Voice: (608) 266-1064

Fax: (608) 264-7979

Courier: 345 W. Washington Ave. 4th Floor Madison, WI 53703

TTY: (608) 266-8818

Internet: www.wdfi.org

We understand that you will be forwarding our Draft amendment language to the Legislative Reference Bureau to have a legislative bill draft prepared for purposes of next week's meeting of the Law Review Committee.

Please direct any technical questions regarding this matter to Randall Schumann of the DFI Division of Securities at 266-3414, and I may be reached at my direct dial number 267-1719.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Haberland".

Catherine Haberland
DFI Executive Assistant

cc: Patricia D. Struck, Securities Division Administrator
Randall E. Schumann, Legal Counsel for the Division of Securities

Attachments (2)

Minor Substantive Remedial Amendment

To section 553.27(4) of the Wisconsin Franchise Investment Law

Section 553.27(4) of the statutes is amended to read:

553.27 (4) No franchise subject to registration under this chapter may be sold in this state unless a copy of an offering circular is provided to the prospective franchisee at least ~~10~~ business 14 calendar days prior to the execution by the prospective franchisee of any binding franchise or other agreement with the franchisor or any affiliate, or at least ~~10~~ business 14 calendar days prior to the receipt payment of any consideration to the franchisor or any affiliate, whichever first occurs. The offering circular may be in a form that the division requires by rule, in a form permitted under 16 CFR 436 or in a form permitted by a successor to that regulation.

business from the retailer's location where the seller purchases no goods, services, or commodities directly or indirectly from the retailer, a person the retailer requires the seller to do business with, or a retailer-affiliate if the retailer advises the seller to do business with the affiliate.

(m) *Parent* means an entity that controls another entity directly, or indirectly through one or more subsidiaries.

(n) *Person* means any individual, group, association, limited or general partnership, corporation, or any other entity.

(o) *Plain English* means the organization of information and language usage understandable by a person unfamiliar with the franchise business. It incorporates short sentences; definite, concrete, everyday language; active voice; and tabular presentation of information, where possible. It avoids legal jargon, highly technical business terms, and multiple negatives.

(p) *Predecessor* means a person from whom the franchisor acquired, directly or indirectly, the major portion of the franchisor's assets.

(q) *Principal business address* means the street address of a person's home office in the United States. A principal business address cannot be a post office box or private mail drop.

(r) *Prospective franchisee* means any person (including any agent, representative, or employee) who approaches or is approached by a franchise seller to discuss the possible establishment of a franchise relationship.

(s) *Required payment* means all consideration that the franchisee must pay to the franchisor or an affiliate, either by contract or by practical necessity, as a condition of obtaining or commencing operation of the franchise. A required payment does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

(t) *Sale of a franchise* includes an agreement whereby a person obtains a franchise from a franchise seller for value by purchase, license, or otherwise. It does not include extending or renewing an existing franchise agreement where there has been no interruption in the franchisee's operation of the business, unless the new agreement contains terms and conditions that differ materially from the original agreement. It also does not include the transfer of a franchise by an existing franchisee where the franchisor has had no significant involvement with the prospective transferee. A

franchisor's approval or disapproval of a transfer alone is not deemed to be significant involvement.

(u) *Signature* means a person's affirmative step to authenticate his or her identity. It includes a person's handwritten signature, as well as a person's use of security codes, passwords, electronic signatures, and similar devices to authenticate his or her identity.

(v) *Trademark* includes trademarks, service marks, names, logos, and other commercial symbols.

(w) *Written or in writing* means any document or information in printed form or in any form capable of being preserved in tangible form and read. It includes: type-set, word processed, or handwritten document; information on computer disk or CD-ROM; information sent via email; or information posted on the Internet. It does not include mere oral statements.

Subpart B—Franchisors' Obligations

§ 436.2 Obligation to furnish documents.

In connection with the offer or sale of a franchise to be located in the United States of America or its territories, unless the transaction is exempted under Subpart E of this part, it is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act:

(a) For any franchisor to fail to furnish a prospective franchisee with a copy of the franchisor's current disclosure document, as described in Subparts C and D of this part, at least 14 calendar-days before the prospective franchisee signs a binding agreement with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

(b) For any franchisor to alter unilaterally and materially the terms and conditions of the basic franchise agreement or any related agreements attached to the disclosure document without furnishing the prospective franchisee with a copy of each revised agreement at least seven calendar-days before the prospective franchisee signs the revised agreement. Changes to an agreement that arise out of negotiations initiated by the prospective franchisee do not trigger this seven calendar-day period.

(c) For purposes of paragraphs (a) and (b) of this section, the franchisor has furnished the documents by the required date if:

(1) A copy of the document was hand-delivered, faxed, emailed, or otherwise delivered to the prospective franchisee by the required date;

(2) Directions for accessing the document on the Internet were provided to the prospective franchisee by the required date; or

(3) A paper or tangible electronic copy (for example, computer disk or CD-ROM) was sent to the address specified by the prospective franchisee by first-class United States mail at least three calendar days before the required date.

Subpart C—Contents of a Disclosure Document

§ 436.3 Cover page.

Begin the disclosure document with a cover page, in the order and form as follows:

(a) The title "**FRANCHISE DISCLOSURE DOCUMENT**" in capital letters and bold type.

(b) The franchisor's name, type of business organization, principal business address, telephone number, and, if applicable, email address and primary home page address.

(c) A sample of the primary business trademark that the franchisee will use in its business.

(d) A brief description of the franchised business.

(e) The following statements:

(1) The total investment necessary to begin operation of a [franchise system name] franchise is [the total amount of Item 7 (§ 436.5(g))]. This includes [the total amount in Item 5 (§ 436.5(e))] that must be paid to the franchisor or affiliate.

(2) This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar-days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. [The following sentence in bold type] **Note, however, that no governmental agency has verified the information contained in this document.**

(3) The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

(4) Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "*A Consumer's Guide to Buying a Franchise*," which

jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

- 1 AN ACT ...; **relating to:** offering circulars provided to prospective franchisees
2 under the franchise investment law (suggested as remedial legislation by the
3 Department of Financial Institutions).✓

Analysis by the Legislative Reference Bureau

Under the state's franchise investment law,✓ a person attempting to sell a franchise must generally register the franchise offered for sale with the Division of Securities (division)✓ and provide a copy of an offering circular,✓ in a form required by the division✓ or permitted under federal law, to the prospective franchisee at least 10 business days prior to the earlier of: 1) the prospective franchisee's execution of any binding franchise or other agreement;✓ or 2) the receipt of any consideration.✓

* This bill specifies that the time period for the franchisor to provide a copy of the offering circular to the prospective franchisee is at least 14 calendar days, rather than 10 business days, prior to the the earlier of: 1) the prospective franchisee's execution of any binding franchise or other agreement with the franchisor or any affiliate of the franchisor;✓ or 2) the payment of any consideration to the franchisor or any affiliate of the franchisor.✓

* For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Financial Institutions✓ and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill

makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 553.27 (4)[✓] of the statutes is amended to read:

2 553.27 (4) No franchise subject to registration under this chapter may be sold
3 in this state unless a copy of an offering circular is provided to the prospective
4 franchisee at least 10-business 14[✓] days prior to the execution by the prospective
5 franchisee of any binding franchise or other agreement with the franchisor or any
6 affiliate of the franchisor[✓] or at least 10-business 14[✓] days prior to the ~~receipt~~ payment
7 of any consideration to the franchisor or any affiliate of the franchisor[✓], whichever
8 first occurs. The offering circular may be in a form that the division requires by rule,
9 in a form permitted under 16 CFR 436 or in a form permitted by a successor to that
10 regulation.

History: 1971 c. 241; 1981 c. 54 ss. 10, 11, 32; 1981 c. 314; 1987 a. 381; 1995 a. 27, 364; 2001 a. 102.

11 **(END)**

Rec'd from Don Dyke 12/18

2007 - 2008 LEGISLATURE

SCOR

LRB-3596/PT

ARG:jld:pg

in 12/18

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

- 1 AN ACT *to amend* 553.27 (4) of the statutes; **relating to:** offering circulars
2 provided to prospective franchisees under the franchise investment law
3 (suggested as remedial legislation by the Department of Financial
4 Institutions).

Analysis by the Legislative Reference Bureau

Under the state's franchise investment law, a person attempting to sell a franchise must generally register the franchise offered for sale with the Division of Securities (division) and provide a copy of an offering circular, in a form required by the division or permitted under federal law, to the prospective franchisee at least ten business days prior to the earlier of: 1) the prospective franchisee's execution of any binding franchise or other agreement; or 2) the receipt of any consideration.

This bill specifies that the time period for the franchisor to provide a copy of the offering circular to the prospective franchisee is at least 14 calendar days, rather than ten business days, prior to the the earlier of: 1) the prospective franchisee's execution of any binding franchise or other agreement with the franchisor or any affiliate of the franchisor; or 2) the payment of any consideration to the franchisor or any affiliate of the franchisor.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Financial Institutions and introduced by the

OVER
↓

Law Revision Committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 553.27 (4) ^x of the statutes is amended to read:

2 553.27 (4) No franchise subject to registration under this chapter may be sold
3 in this state unless a copy of an offering circular is provided to the prospective
4 franchisee at least ~~10-business~~ 14 days prior to the execution by the prospective
5 franchisee of any binding franchise or other agreement with the franchisor or any
6 affiliate of the franchisor or at least ~~10-business~~ 14 days prior to the receipt payment
7 of any consideration to the franchisor or any affiliate of the franchisor, whichever
8 first occurs. The offering circular may be in a form that the division requires by rule,
9 in a form permitted under 16 CFR 436 or in a form permitted by a successor to that
10 regulation.

11

(END)

Insert A

INSERT A (to LRB-3596/P1)

CS

note:
std

NOTE: After July 1, 2008, franchisors who offer and sell their franchises nationally in multiple states must comply with a new FTC regulation requiring a franchisor to provide a franchise disclosure document to a prospective franchisee at least 14[✓] calendar days before a binding franchise agreement is signed or any payment is made, whichever first occurs. Wisconsin law requires the disclosure document to be furnished at least 10 business days before the signing or payment, reflecting the former FTC requirement. This bill, by incorporating the new federal requirement into Wisconsin[✓] law, eliminates the inconsistency between the two, assuring compliance with both.*

The pertinent FTC regulation provides:

* In connection with the offer or sale of a franchise to be located in the United States of America or its territories, unless the transaction is exempted under Subpart E of this part, it is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act: (a) For any franchisor to fail to furnish a prospective franchisee with a copy of the franchisor's current disclosure document, as described in Subparts C and D of this part, at least 14 calendar days before the prospective franchisee signs a binding agreement with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. [16 CFR s. 436.2 (a).] ^e

* Until July 2, 2008, federal regulations allow franchisors to use either the 10-business day or 14-calendar day requirement. ^e

(end ins A)

Barman, Mike

From: Dyke, Don
Sent: Wednesday, December 19, 2007 10:37 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-3596/1 Topic: the time period for providing offering circulars under the franchise investment law

Please Jacket LRB 07-3596/1 for the SENATE.

Thanks,
Don Dyke